

108TH CONGRESS
1ST SESSION

H. R. 1829

To amend title 18, United States Code, to require Federal Prison Industries to compete for its contracts minimizing its unfair competition with private sector firms and their non-inmate workers and empowering Federal agencies to get the best value for taxpayers' dollars, to provide a five-year period during which Federal Prison Industries adjusts to obtaining inmate work opportunities through other than its mandatory source status, to enhance inmate access to remedial and vocational opportunities and other rehabilitative opportunities to better prepare inmates for a successful return to society, to authorize alternative inmate work opportunities in support of non-profit organizations, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 12, 2003

Mr. HOEKSTRA (for himself, Mr. FRANK of Massachusetts, Mr. COLLINS, Mrs. MALONEY, Mr. SENSENBRENNER, Mr. CONYERS, Mr. COBLE, Mr. WATT, Mr. MANZULLO, Ms. VELÁZQUEZ, Mr. BOEHNER, Mr. GEORGE MILLER of California, Mr. TOM DAVIS of Virginia, Mr. RANGEL, Mr. TOOMEY, Mr. NADLER, Mr. EHLERS, Mr. DINGELL, Mr. LOBIONDO, Mr. CANTOR, Ms. BALDWIN, Mr. NORWOOD, Ms. WOOLSEY, Mr. SOUDER, Mr. FERGUSON, Ms. SCHAKOWSKY, Mr. SHADEGG, Mr. KINGSTON, Ms. HART, Ms. LEE, Mr. HOSTETTLER, Mr. FILNER, Mr. BARTLETT of Maryland, Mr. OXLEY, Mr. ENGLISH, Mr. MCINTYRE, Mr. DEMINT, Mr. FLAKE, Mr. SMITH of New Jersey, Mr. RYAN of Wisconsin, Mr. CULBERSON, Mr. EMANUEL, Mr. FORBES, Mr. GOODE, Mrs. NORTHUP, Mr. OLVER, Mr. BLUNT, Ms. PRYCE of Ohio, Mrs. MILLER of Michigan, Mr. CRAMER, Mr. CAMP, Mr. ROGERS of Michigan, Mr. LEACH, Mr. PENCE, Mr. HILL, Mr. UPTON, Mr. MCCOTTER, Mr. LANGEVIN, Mr. NETHERCUTT, Mr. OSBORNE, Mr. HAYES, Mr. WAMP, Mr. TERRY, Mr. KLECZKA, Mrs. MYRICK, Mr. NEY, Mr. BRADY of Pennsylvania, Mr. BRADY of Texas, Mrs. JONES of Ohio, Mr. JONES of North Carolina, Mr. SESSIONS, Mrs. CUBIN, Mrs. CAPITO, Mr. BURR, Mr. CLAY, Mr. KNOLLENBERG, Mr. MORAN of Kansas, Mr. TIBERI, Mr. PORTER, Mr. MCGOVERN, Mr. BALLENGER, Mr. DEAL of Georgia, Mr. EVERETT, Mr. KENNEDY of Rhode Island, Mr. MCKEON, Mr. ISAKSON, Mr. LATOURETTE, Mr. THORNBERRY, Mrs. WILSON of New Mexico, Mr. ROYCE, Mr. KLINE, Mr. KUCINICH, Mr. DUNCAN, Mr. TIAHRT, Mr. QUINN, Mr. WILSON of South Carolina, Mr. DOOLITTLE, Mr. McDERMOTT, Mrs. BIGGERT, Mrs. MUSGRAVE, Mr. CHOCOLA, Mr. GINGREY, Mr. NUNES, and Mr. BURNS)

introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to require Federal Prison Industries to compete for its contracts minimizing its unfair competition with private sector firms and their non-inmate workers and empowering Federal agencies to get the best value for taxpayers' dollars, to provide a five-year period during which Federal Prison Industries adjusts to obtaining inmate work opportunities through other than its mandatory source status, to enhance inmate access to remedial and vocational opportunities and other rehabilitative opportunities to better prepare inmates for a successful return to society, to authorize alternative inmate work opportunities in support of non-profit organizations, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
 5 “Federal Prison Industries Competition in Contracting
 6 Act of 2003”.

7 (b) TABLE OF CONTENTS.—The table of contents for
 8 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Governmentwide procurement policy relating to purchases from Federal
 Prison Industries.

Sec. 3. Public participation regarding expansion proposals by Federal Prison
 Industries.

- Sec. 4. Transitional mandatory source authority.
- Sec. 5. Authority to perform as a Federal subcontractor.
- Sec. 6. Inmate wages and deductions.
- Sec. 7. Clarifying amendment relating to services.
- Sec. 8. Conforming amendment.
- Sec. 9. Rules of construction relating to chapter 307.
- Sec. 10. Providing additional rehabilitative opportunities for inmates.
- Sec. 11. Restructuring the Board of Directors.
- Sec. 12. Providing additional management flexibility to Federal Prison Industry operations.
- Sec. 13. Transitional personnel management authority.
- Sec. 14. Federal Prison Industries report to Congress.
- Sec. 15. Independent study to determine the effects of eliminating the Federal Prison Industries mandatory source authority.
- Sec. 16. Definitions.
- Sec. 17. Implementing regulations and procedures.
- Sec. 18. Rule of construction.
- Sec. 19. Effective date and applicability.
- Sec. 20. Clerical amendments.

1 **SEC. 2. GOVERNMENTWIDE PROCUREMENT POLICY RELAT-**
 2 **ING TO PURCHASES FROM FEDERAL PRISON**
 3 **INDUSTRIES.**

4 Section 4124 of title 18, United States Code, is
 5 amended to read as follows:

6 **“§4124. Governmentwide procurement policy relat-**
 7 **ing to purchases from Federal Prison In-**
 8 **dustries**

9 “(a) IN GENERAL.—Purchases from Federal Prison
 10 Industries, Incorporated, a wholly owned Government cor-
 11 poration, as referred to in section 9101(3)(E) of title 31,
 12 may be made by a Federal department or agency only in
 13 accordance with this section.

14 “(b) SOLICITATION AND EVALUATION OF OFFERS
 15 AND CONTRACT AWARDS.—(1) If a procurement activity
 16 of a Federal department or agency has a requirement for

1 a specific product or service that is authorized to be of-
2 fered for sale by Federal Prison Industries, in accordance
3 with section 4122 of this title, and is listed in the catalog
4 referred to in subsection (g), the procurement activity
5 shall solicit an offer from Federal Prison Industries, if the
6 purchase is expected to be in excess of the micro-purchase
7 threshold (as defined by section 32(f) of the Office of Fed-
8 eral Procurement Policy Act (41 U.S.C. 428(f))).

9 “(2) A contract award for such product or service
10 shall be made using competitive procedures in accordance
11 with the applicable evaluation factors, unless a determina-
12 tion is made by the Attorney General pursuant to para-
13 graph (3) or an award using other than competitive proce-
14 dures is authorized pursuant to paragraph (7).

15 “(3) The procurement activity shall negotiate with
16 Federal Prison Industries on a noncompetitive basis for
17 the award of a contract if the Attorney General determines
18 that—

19 “(A) Federal Prison Industries cannot reason-
20 ably expect fair consideration to receive the contract
21 award on a competitive basis; and

22 “(B) the contract award is necessary to main-
23 tain work opportunities otherwise unavailable at the
24 penal or correctional facility at which the contract is
25 to be performed to prevent circumstances that could

1 reasonably be expected to significantly endanger the
2 safe and effective administration of such facility.

3 “(4) Except in the case of an award to be made pur-
4 suant to paragraph (3), a contract award shall be made
5 with Federal Prison Industries only if the contracting offi-
6 cer for the procurement activity determines that—

7 “(A) the specific product or service to be fur-
8 nished will meet the requirements of the procure-
9 ment activity (including any applicable
10 prequalification requirements and all specified com-
11 mercial or governmental standards pertaining to
12 quality, testing, safety, serviceability, and warran-
13 ties);

14 “(B) timely performance of the contract can be
15 reasonably expected; and

16 “(C) the contract price does not exceed a cur-
17 rent market price.

18 “(5) A determination by the Attorney General pursu-
19 ant to paragraph (3) shall be—

20 “(A) supported by specific findings by the war-
21 den of the penal or correctional institution at which
22 a Federal Prison Industries workshop is scheduled
23 to perform the contract;

1 “(B) supported by specific findings by Federal
2 Prison Industries regarding why it does not expect
3 to win the contract on a competitive basis; and

4 “(C) made and reported in the same manner as
5 a determination made pursuant to section 303(c)(7)
6 of the Federal Property and Administrative Services
7 Act of 1949 (41 U.S.C. 253(c)(7)).

8 “(6) If the Attorney General has not made the deter-
9 mination described in paragraph (3) within 30 days after
10 Federal Prison Industries has been informed of a con-
11 tracting opportunity by a procurement activity, the pro-
12 curement activity may proceed to conduct a procurement
13 for the product or service in accordance with the proce-
14 dures generally applicable to such procurements by the
15 procurement activity.

16 “(7) A contract award may be made to Federal Pris-
17 on Industries using other than competitive procedures if
18 such product or service is only available from Federal
19 Prison Industries and the contract may be awarded under
20 the authority of section 2304(c)(1) of title 10 or section
21 303(c) of the Federal Property and Administrative Serv-
22 ices Act of 1949 (41 U.S.C. 252(c)(1)), as may be applica-
23 ble, and pursuant to the justification and approval re-
24 quirements relating to such noncompetitive procurements

1 specified by law and the Governmentwide Federal Acquisi-
2 tion Regulation.

3 “(c) OFFERS FROM FEDERAL PRISON INDUS-
4 TRIES.—A timely offer received from Federal Prison In-
5 dustries to furnish a product or service to a Federal de-
6 partment or agency shall be considered for award without
7 limitation as to the dollar value of the proposed purchase.

8 “(d) PERFORMANCE BY FEDERAL PRISON INDUS-
9 TRIES.—Federal Prison Industries shall perform its con-
10 tractual obligations under a contract awarded by a Fed-
11 eral department or agency to the same extent as any other
12 contractor.

13 “(e) FINALITY OF CONTRACTING OFFICER’S DECI-
14 SION.—(1) A decision by a contracting officer regarding
15 the award of a contract to Federal Prison Industries or
16 relating to the performance of such contract shall be final,
17 unless reversed on appeal pursuant to paragraph (2) or
18 (3).

19 “(2) The Chief Executive Officer of Federal Prison
20 Industries may appeal to the head of a Federal depart-
21 ment or agency a decision by a contracting officer not to
22 award a contract to Federal Prison Industries pursuant
23 to subsection (b)(4). The decision of the head of a Federal
24 department or agency on appeal shall be final.

1 “(3) A dispute between Federal Prison Industries
2 and a procurement activity regarding performance of a
3 contract shall be subject to—

4 “(A) alternative means of dispute resolution
5 pursuant to subchapter IV of chapter 5 of title 5;
6 or

7 “(B) final resolution by the board of contract
8 appeals having jurisdiction over the procurement ac-
9 tivity’s contract performance disputes pursuant to
10 the Contract Disputes Act of 1978 (41 U.S.C. 601
11 et seq.).

12 “(f) REPORTING OF PURCHASES.—Each Federal de-
13 partment or agency shall report purchases from Federal
14 Prison Industries to the Federal Procurement Data Sys-
15 tem (as referred to in section 6(d)(4) of the Office of Fed-
16 eral Procurement Policy Act (41 U.S.C. 405(d)(4))) in the
17 same manner as it reports to such System any acquisition
18 in an amount in excess of the simplified acquisition thresh-
19 old (as defined by section 4(11) of the Office of Federal
20 Procurement Policy Act (41 U.S.C. 403(11))).

21 “(g) CATALOG OF PRODUCTS.—Federal Prison In-
22 dustries shall publish and maintain a catalog of all specific
23 products and services that it is authorized to offer for sale.
24 Such catalog shall be periodically revised as products and

1 services are added or deleted by its board of directors (in
2 accordance with section 4122(b) of this title).

3 “(h) COMPLIANCE WITH STANDARDS.—Federal Pris-
4 on Industries shall comply with Federal occupational,
5 health, and safety standards with respect to the operation
6 of its industrial operations.”.

7 **SEC. 3. PUBLIC PARTICIPATION REGARDING EXPANSION**
8 **PROPOSALS BY FEDERAL PRISON INDUS-**
9 **TRIES.**

10 Section 4122(b) of title 18, United States Code, is
11 amended—

12 (1) by redesignating paragraph (6) as para-
13 graph (12); and

14 (2) by striking paragraphs (4) and (5) and in-
15 serting the following new paragraphs:

16 “(4) A decision to authorize Federal Prison Indus-
17 tries to offer a new specific product or specific service or
18 to expand the production of an existing product or service
19 shall be made by its board of directors in conformance
20 with the requirements of subsections (b), (c), (d), and (e)
21 of section 553 of title 5, and this chapter.

22 “(5)(A) Whenever Federal Prison Industries pro-
23 poses to offer for sale a new specific product or specific
24 service or to expand production of a currently authorized
25 product or service, the Chief Operating Officer of Federal

1 Prison Industries shall submit an appropriate proposal to
2 the board of directors and obtain the board's approval be-
3 fore initiating any such expansion. The proposal submitted
4 to the board shall include a detailed analysis of the prob-
5 able impact of the proposed expansion of sales within the
6 Federal market by Federal Prison Industries on private
7 sector firms and their non-inmate workers.

8 “(B)(i) The analysis required by subparagraph (A)
9 shall be performed by an interagency team on a reimburs-
10 able basis or by a private contractor paid by Federal Pris-
11 on Industries.

12 “(ii) If the analysis is to be performed by an inter-
13 agency team, such team shall be led by the Administrator
14 of the Small Business Administration or the designee of
15 such officer with representatives of the Department of
16 Labor, the Department of Commerce, and the Federal
17 Procurement Data Center.

18 “(iii) If the analysis is to be performed by a private
19 contractor, the selection of the contractor and the admin-
20 istration of the contract shall be conducted by one of the
21 entities referenced in clause (ii) as an independent execu-
22 tive agent for the board of directors. Maximum consider-
23 ation shall be given to any proposed statement of work
24 furnished by the Chief Operating Officer of Federal Prison
25 Industries.

1 “(C) The analysis required by subparagraph (A) shall
2 identify and consider—

3 “(i) the number of vendors that currently meet
4 the requirements of the Federal Government for the
5 specific product or specific service;

6 “(ii) the proportion of the Federal Government
7 market for the specific product or specific service
8 currently furnished by small businesses during the
9 previous 3 fiscal years;

10 “(iii) the share of the Federal market for the
11 specific product or specific service projected for Fed-
12 eral Prison Industries for the fiscal year in which
13 production or performance will commence or expand
14 and the subsequent 4 fiscal years;

15 “(iv) whether the industry producing the spe-
16 cific product or specific service in the private sec-
17 tor—

18 “(I) has an unemployment rate higher
19 than the national average; or

20 “(II) has a rate of unemployment for
21 workers that has consistently shown an increase
22 during the previous 5 years;

23 “(v) whether the specific product is an import-
24 sensitive product;

1 “(vi) the requirements of the Federal Govern-
2 ment and the demands of entities other than the
3 Federal Government for the specific product or serv-
4 ice during the previous 3 fiscal years;

5 “(vii) the projected growth or decline in the de-
6 mand of the Federal Government for the specific
7 product or specific service;

8 “(viii) the capability of the projected demand of
9 the Federal Government for the specific product or
10 service to sustain both Federal Prison Industries
11 and private vendors; and

12 “(ix) whether authorizing the production of the
13 new product or performance of a new service will
14 provide inmates with the maximum opportunity to
15 acquire knowledge and skill in trades and occupa-
16 tions that will provide them with a means of earning
17 a livelihood upon release.

18 “(D)(i) The board of directors may not approve a
19 proposal to authorize the production and sale of a new
20 specific product or continued sales of a previously author-
21 ized product unless—

22 “(I) the product to be furnished is a prison-
23 made product; or

24 “(II) the service to be furnished is to be per-
25 formed by inmate workers.

1 “(ii) The board of directors may not approve a pro-
2 posal to authorize the production and sale of a new prison-
3 made product or to expand production of a currently au-
4 thorized product if the product is—

5 “(I) produced in the private sector by an indus-
6 try which has reflected during the previous year an
7 unemployment rate above the national average; or

8 “(II) an import-sensitive product.

9 “(iii) The board of directors may not approve a pro-
10 posal for inmates to provide a service in which an inmate
11 worker has access to—

12 “(I) personal or financial information about in-
13 dividual private citizens, including information relat-
14 ing to such person’s real property, however de-
15 scribed, without giving prior notice to such persons
16 or class of persons to the greatest extent practicable;

17 “(II) geographic data regarding the location of
18 surface and subsurface infrastructure providing com-
19 munications, water and electrical power distribution,
20 pipelines for the distribution of natural gas, bulk pe-
21 troleum products and other commodities, and other
22 utilities; or

23 “(III) data that is classified.

24 “(iv)(I) Federal Prison Industries is prohibited from
25 furnishing through inmate labor construction services, un-

1 less to be performed within a Federal correctional institu-
2 tion pursuant to the participation of an inmate in an ap-
3 prenticeship or other vocational education program teach-
4 ing the skills of the various building trades.

5 “(II) For purposes of this clause, the term ‘construc-
6 tion’ has the meaning given such term by section 2.101
7 of the Federal Acquisition Regulation (48 CFR part
8 2.101), as in effect on June 1, 2002, including the repair,
9 alteration, or maintenance of real property in being.

10 “(6) To provide further opportunities for participa-
11 tion by interested parties, the board of directors shall—

12 “(A) give additional notice of a proposal to au-
13 thorize the production and sale of a new product or
14 service, or expand the production of a currently au-
15 thorized product or service, in a publication designed
16 to most effectively provide notice to private vendors
17 and labor unions representing private sector workers
18 who could reasonably be expected to be affected by
19 approval of the proposal, which notice shall offer to
20 furnish copies of the analysis required by paragraph
21 (5) and shall solicit comment on the analysis;

22 “(B) solicit comments on the analysis required
23 by paragraph (5) from trade associations rep-
24 resenting vendors and labor unions representing pri-
25 vate sector workers who could reasonably be ex-

1 pected to be affected by approval of the proposal to
2 authorize the production and sale of a new product
3 or service (or expand the production of a currently
4 authorized product or service); and

5 “(C) afford an opportunity, on request, for a
6 representative of an established trade association,
7 labor union, or other private sector representatives
8 to present comments on the proposal directly to the
9 board of directors.

10 “(7) The board of directors shall be provided copies
11 of all comments received on the expansion proposal.

12 “(8) Based on the comments received on the initial
13 expansion proposal, the Chief Operating Officer of Federal
14 Prison Industries may provide the board of directors a re-
15 vised expansion proposal. If such revised proposal provides
16 for expansion of inmate work opportunities in an industry
17 different from that initially proposed, such revised pro-
18 posal shall reflect the analysis required by paragraph
19 (5)(C) and be subject to the public comment requirements
20 of paragraph (6).

21 “(9) The board of directors shall consider a proposal
22 to authorize the sale of a new specific product or specific
23 service (or to expand the volume of sales for a currently
24 authorized product or service) and take any action with
25 respect to such proposal, during a meeting that is open

1 to the public, unless closed pursuant to section 552(b) of
2 title 5.

3 “(10) In conformity with the requirements of para-
4 graphs (5) through (9) of this subsection, the board of
5 directors may—

6 “(A) authorize the donation of products pro-
7 duced or services furnished by Federal industries
8 and available for sale; or

9 “(B) authorize the production of a new specific
10 product or the furnishing of a new specific service
11 for donation.”.

12 **SEC. 4. TRANSITIONAL MANDATORY SOURCE AUTHORITY.**

13 (a) IN GENERAL.—Notwithstanding the require-
14 ments of section 4124 of title 18, United States Code (as
15 amended by section 2 of this Act), a Federal department
16 or agency having a requirement for a product that is au-
17 thorized for sale by Federal Prison Industries and is listed
18 in its catalog (referred to in section 4124(g) of title 18,
19 United States Code) shall first solicit an offer from Fed-
20 eral Prison Industries and make purchases on a non-
21 competitive basis in accordance with this section.

22 (b) PREFERENTIAL SOURCE STATUS.—Subject to
23 the limitations of subsection (d), a contract award shall
24 be made on a noncompetitive basis to Federal Prison In-

1 dustries if the contracting officer for the procurement ac-
2 tivity determines that—

3 (1) the product offered by Federal Prison In-
4 dustries will meet the requirements of the procure-
5 ment activity (including commercial or governmental
6 standards or specifications pertaining to design, per-
7 formance, testing, safety, serviceability, and warran-
8 ties as may be imposed upon a private sector sup-
9 plier of the type being offered by Federal Prison In-
10 dustries);

11 (2) timely performance of the contract by Fed-
12 eral Prison Industries can be reasonably expected;
13 and

14 (3) the negotiated price does not exceed a fair
15 and reasonable price.

16 (c) CONTRACTUAL TERMS.—The terms and condi-
17 tions of the contract and the price to be paid to Federal
18 Prison Industries shall be determined by negotiation be-
19 tween Federal Prison Industries and the Federal agency
20 making the purchase. The negotiated price shall not ex-
21 ceed a fair and reasonable price determined in accordance
22 with the procedures of the Federal Acquisition Regulation.

23 (d) PERFORMANCE OF CONTRACTUAL OBLIGA-
24 TIONS.—

1 (1) IN GENERAL.—Federal Prison Industries
2 shall perform the obligations of the contract nego-
3 tiated pursuant to subsection (c).

4 (2) PERFORMANCE DISPUTES.—If the head of
5 the contracting activity and the Chief Operating Of-
6 ficer of Federal Prison Industries are unable to re-
7 solve a contract performance dispute to their mutual
8 satisfaction, such dispute shall be resolved pursuant
9 to section 4124(e)(3) of title 18, United States Code
10 (as added by section 2 of this Act).

11 (e) LIMITATIONS ON USE OF AUTHORITY.—

12 (1) IN GENERAL.—As a percentage of the sales
13 made by Federal Prison Industries during the base
14 period, the total dollar value of sales to the Govern-
15 ment made pursuant to subsection (b) and sub-
16 section (c) of this section shall not exceed—

17 (A) 90 percent in fiscal year 2005;

18 (B) 85 percent in fiscal year 2006;

19 (C) 70 percent in fiscal year 2007;

20 (D) 55 percent in fiscal year 2008; and

21 (E) 40 percent in fiscal year 2009.

22 (2) SALES WITHIN VARIOUS BUSINESS SEC-
23 TORS.—Use of the authority provided by subsections
24 (b) and (c) shall not result in sales by Federal Pris-
25 on Industries to the Government that are in excess

1 of its total sales during the base year for each busi-
2 ness sector.

3 (3) LIMITATIONS RELATING TO SPECIFIC PROD-
4 UCTS.—Use of the authorities provided by sub-
5 sections (b) and (c) shall not result in contract
6 awards to Federal Prison Industries that are in ex-
7 cess of its total sales during the base period for such
8 product.

9 (4) CHANGES IN DESIGN SPECIFICATIONS.—
10 The limitations on sales specified in paragraphs (2)
11 and (3) shall not be affected by any increases in the
12 unit cost of production of a specific product arising
13 from changes in the design specification of such
14 product directed by the buying agency.

15 (f) DURATION OF AUTHORITY.—The preferential
16 contracting authorities authorized by subsection (b) may
17 not be used on or after October 1, 2009, and become effec-
18 tive on the effective date of the final regulations issued
19 pursuant to section 17.

20 (g) DEFINITIONS.—For the purposes of this sec-
21 tion—

22 (1) the term “base period” means the total
23 sales of Federal Prison Industries during the period
24 October 1, 2001, and September 30, 2002 (Fiscal
25 Year 2002);

1 (2) the term “business sectors” means the eight
2 product/service business groups identified in the
3 2002 Federal Prison Industries annual report as the
4 Clothing and Textile Business Group, the Elec-
5 tronics Business Group, the Fleet Management and
6 Vehicular Components Business Group, the Graphics
7 Business Group, the Industrial Products Business
8 Group, the Office Furniture Business Group, the
9 Recycling Activities Business Group, and the Serv-
10 ices Business Group; and

11 (3) the term “fair and reasonable price” shall
12 be given the same meaning as, and be determined
13 pursuant to, part 15.8 of the Federal Acquisition
14 Regulation (48 C.F.R. 15.8).

15 (h) FINDING BY ATTORNEY GENERAL WITH RE-
16 SPECT TO PUBLIC SAFETY.—(1) Not later than 60 days
17 prior to the end of each fiscal year specified in subsection
18 (e)(1), the Attorney General shall make a finding regard-
19 ing the effects of the percentage limitation imposed by
20 such subsection for such fiscal year and the likely effects
21 of the limitation imposed by such subsection for the fol-
22 lowing fiscal year.

23 (2) The Attorney General’s finding shall include a de-
24 termination whether such limitation has resulted or is like-
25 ly to result in a substantial reduction in inmate industrial

1 employment and whether such reductions, if any, present
2 a significant risk of adverse effects on safe prison oper-
3 ation or public safety.

4 (3) If the Attorney General finds a significant risk
5 of adverse effects on either safe prison management or
6 public safety, he shall so advise the Congress.

7 (4) In advising the Congress pursuant to paragraph
8 (3), the Attorney General shall make recommendations for
9 additional authorizations of appropriations to provide ad-
10 ditional alternative inmate rehabilitative opportunities and
11 additional correctional staffing, as may be appropriate.

12 **SEC. 5. AUTHORITY TO PERFORM AS A FEDERAL SUBCON-**
13 **TRACTOR.**

14 (a) IN GENERAL.—Federal Prison Industries is au-
15 thorized to enter into a contract with a Federal contractor
16 (or a subcontractor of such contractor at any tier) to
17 produce products as a subcontractor or supplier in the per-
18 formance of a Federal procurement contract. The use of
19 Federal Prison Industries as a subcontractor or supplier
20 shall be a wholly voluntary business decision by the Fed-
21 eral prime contractor or subcontractor, subject to any
22 prior approval of subcontractors or suppliers by the con-
23 tracting officer which may be imposed by the Federal Ac-
24 quisition Regulation or by the contract.

1 (b) COMMERCIAL SALES PROHIBITED.—The author-
2 ity provided by subsection (a) shall not result, either di-
3 rectly or indirectly, in the sale in the commercial market
4 of a product or service resulting from the labor of Federal
5 inmate workers in violation of section 1762(a) of title 18,
6 United States Code. A Federal contractor (or subcon-
7 tractor at any tier) using Federal Prison Industries as a
8 subcontractor or supplier in furnishing a commercial prod-
9 uct pursuant to a Federal contract shall implement appro-
10 priate management procedures to prevent introducing an
11 inmate-produced product into the commercial market.

12 (c) PROHIBITIONS ON MANDATING SUBCONTRACTING
13 WITH FEDERAL PRISON INDUSTRIES.—Except as author-
14 ized under the Federal Acquisition Regulation, the use of
15 Federal Prison Industries as a subcontractor or supplier
16 of products or provider of services shall not be imposed
17 upon prospective or actual Federal prime contractors or
18 a subcontractors at any tier by means of—

19 (1) a contract solicitation provision requiring a
20 contractor to offer to make use of Federal Prison
21 Industries, its products or services;

22 (2) specifications requiring the contractor to
23 use specific products or services (or classes of prod-
24 ucts or services) offered by Federal Prison Indus-
25 tries in the performance of the contract;

1 (3) any contract modification directing the use
2 of Federal Prison Industries, its products or serv-
3 ices; or

4 (4) any other means.

5 **SEC. 6. INMATE WAGES AND DEDUCTIONS.**

6 Section 4122(b) of title 18, United States Code (as
7 amended by section 3 of this Act), is further amended by
8 adding a new paragraph (11) as follows:

9 “(11)(A) The Board of Directors of Federal Prison
10 Industries shall prescribe the rates of hourly wages to be
11 paid inmates performing work for or through Federal
12 Prison Industries. The Director of the Federal Bureau of
13 Prisons shall prescribe the rates of hourly wages for other
14 work assignments within the various Federal correctional
15 institutions.

16 “(B) The various inmate wage rates shall be reviewed
17 and considered for increase on not less than a biannual
18 basis.

19 “(C) Wages earned by an inmate worker shall be paid
20 in the name of the inmate. Deductions, aggregating to not
21 more than 80 percent of gross wages, shall be taken from
22 the wages due for—

23 “(i) applicable taxes (Federal, State, and local);

24 “(ii) payment of fines and restitution pursuant
25 to court order;

1 “(iii) payment of additional restitution for vic-
2 tims of the inmate’s crimes (at a rate not less than
3 10 percent of gross wages);

4 “(iv) allocations for support of the inmate’s
5 family pursuant to statute, court order, or agree-
6 ment with the inmate;

7 “(v) allocations to a fund in the inmate’s name
8 to facilitate such inmate’s assimilation back into so-
9 ciety, payable at the conclusion of incarceration; and

10 “(vi) such other deductions as may be specified
11 by the Director of the Bureau of Prisons.

12 “(D) Each inmate worker working for Federal Prison
13 Industries shall indicate in writing that such person—

14 “(i) is participating voluntarily; and

15 “(ii) understands and agrees to the wages to be
16 paid and deductions to be taken from such wages.”.

17 **SEC. 7. CLARIFYING AMENDMENT RELATING TO SERVICES.**

18 (a) IN GENERAL.—Section 1761 of title 18, United
19 States Code, is amended in subsection (a), by striking
20 “any goods, wares, or merchandise manufactured, pro-
21 duced, or mined” and inserting “products manufactured,
22 services furnished, or minerals mined”.

23 (b) COMPLETION OF EXISTING AGREEMENTS.—Any
24 prisoner work program operated by a prison or jail of a
25 State or local jurisdiction of a State which is providing

1 services for the commercial market through inmate labor
2 on October 1, 2002, may continue to provide such com-
3 mercial services until—

4 (1) the expiration date specified in the contract
5 or other agreement with a commercial partner on
6 October 1, 2002, or

7 (2) until September 30, 2005, if the prison
8 work program is directly furnishing the services to
9 the commercial market.

10 (c) APPROVAL REQUIRED FOR LONG-TERM OPER-
11 ATION.—A prison work program operated by a correc-
12 tional institution operated by a State or local jurisdiction
13 of a State may continue to provide inmate labor to furnish
14 services for sale in the commercial market after the dates
15 specified in subsection (b) if such program has been cer-
16 tified pursuant to section 1761(c)(1) of title 18, United
17 States Code, and is in compliance with the requirements
18 of such subsection and its implementing regulations.

19 **SEC. 8. CONFORMING AMENDMENT.**

20 Section 4122(a) of title 18, United States Code, is
21 amended by striking “production of commodities” and in-
22 serting “production of products or furnishing of services”.

1 **SEC. 9. RULES OF CONSTRUCTION RELATING TO CHAPTER**
2 **307.**

3 Chapter 307 of title 18, United States Code, is fur-
4 ther amended by adding the following:

5 **“§ 4130. Construction of provisions**

6 “Nothing in this chapter shall be construed—

7 “(1) to establish an entitlement of any inmate
8 to—

9 “(A) employment in a Federal Prison In-
10 dustries facility; or

11 “(B) any particular wage, compensation,
12 or benefit on demand, except as otherwise spe-
13 cifically provided by law or regulation;

14 “(2) to establish that inmates are employees for
15 the purposes of any law or program; or

16 “(3) to establish any cause of action by or on
17 behalf of any inmate against the United States or
18 any officer, employee, or contractor thereof.”.

19 **SEC. 10. PROVIDING ADDITIONAL REHABILITATIVE OPPOR-**
20 **TUNITIES FOR INMATES.**

21 (a) **ADDITIONAL EDUCATIONAL, TRAINING, AND RE-**
22 **LEASE-PREPARATION OPPORTUNITIES.—**

23 (1) **PROGRAM ESTABLISHED.—**There is hereby
24 established the Enhanced In-Prison Educational and
25 Vocational Assessment and Training Program within
26 the Bureau of Prisons.

1 (2) COMPREHENSIVE PROGRAM.—In addition to
2 such other components as the Director of the Bu-
3 reau of Prisons deems appropriate to reduce inmate
4 idleness and better prepare inmates for a successful
5 reentry into the community upon release, the pro-
6 gram shall provide—

7 (A) in-prison assessments of inmates’
8 needs and aptitudes;

9 (B) a full range of educational opportuni-
10 ties;

11 (C) vocational training and apprentice-
12 ships; and

13 (D) comprehensive release-readiness prepa-
14 ration.

15 (3) AUTHORIZATION OF APPROPRIATIONS.—For
16 the purposes of carrying out the program established
17 by paragraph (1), \$75,000,000 is authorized for
18 each fiscal year after fiscal year 2003, to remain
19 available until expended. Funds shall be allocated
20 from the gross profits within the Federal Prison In-
21 dustries Fund, and, to the extent such amounts are
22 inadequate, from the General Treasury.

23 (b) INMATE WORK OPPORTUNITIES IN SUPPORT OF
24 NOT-FOR-PROFIT ENTITIES.—

1 (1) PROPOSALS FOR DONATION PROGRAMS.—
2 The Chief Operating Officer of Federal Prison In-
3 dustries shall develop and present to the Board of
4 Directors of Federal Prison Industries proposals to
5 have Federal Prison Industries donate products and
6 services to eligible entities that provide goods or
7 services to low-income individuals who would likely
8 otherwise have difficulty purchasing such products
9 or services in the commercial market.

10 (2) SCHEDULE FOR SUBMISSION AND CONSID-
11 ERATION OF DONATION PROGRAMS.—

12 (A) INITIAL PROPOSALS.—The Chief Oper-
13 ating Officer shall submit the initial group of
14 proposals for programs of the type described in
15 paragraph (1) within 180 days after the date of
16 the enactment of this Act. The Board of Direc-
17 tors of Federal Prison Industries shall consider
18 such proposals from the Chief Operating Officer
19 not later than the date that is 270 days after
20 the date of the enactment of this Act.

21 (B) ANNUAL OPERATING PLAN.—The
22 Board of Directors of Federal Prison Industries
23 shall consider proposals by the Chief Operating
24 Officer for programs of the type described in

1 paragraph (1) as part of the annual operating
2 plan for Federal Prison Industries.

3 (C) OTHER PROPOSALS.—In addition to
4 proposals submitted by the Chief Operating Of-
5 ficer, the Board of Directors may, from time to
6 time, consider proposals presented by prospec-
7 tive eligible entities.

8 (3) DEFINITION OF ELIGIBLE ENTITIES.—For
9 the purposes of this subsection, the term “eligible
10 entity” means an entity—

11 (A) that is an organization described in
12 section 501(c)(3) of the Internal Revenue Code
13 of 1986 and exempt from taxation under sec-
14 tion 501(a) of such Code and that has been
15 such an organization for a period of not less
16 than 36 months prior to inclusion in a proposal
17 of the type described in paragraph (1), or

18 (B) that is a religious organization de-
19 scribed in section 501(d) of such Code and ex-
20 empt from taxation under section 501(a) of
21 such Code.

22 (4) AUTHORIZATION OF APPROPRIATIONS.—
23 There are authorized to be appropriated \$7,000,000
24 for each of the fiscal years 2004 through 2008 for
25 the purposes of paying the wages of inmates and

1 otherwise carrying out programs of the type de-
2 scribed in paragraph (1).

3 (c) MAXIMIZING INMATE REHABILITATIVE OPPORTU-
4 NITIES THROUGH COGNITIVE ABILITIES ASSESSMENTS.—

5 (1) DEMONSTRATION PROGRAM AUTHORIZED.—

6 (A) IN GENERAL.—There is hereby estab-
7 lished within the Federal Bureau of Prisons a
8 program to be known as the “Cognitive Abili-
9 ties Assessment Demonstration Program”. The
10 purpose of the demonstration program is to de-
11 termine the effectiveness of a program that as-
12 sesses the cognitive abilities and perceptual
13 skills of Federal inmates to maximize the bene-
14 fits of various rehabilitative opportunities de-
15 signed to prepare each inmate for a successful
16 return to society and reduce recidivism. The
17 demonstration program shall be undertaken by
18 a contractor with a demonstrated record of ena-
19 bling the behavioral and academic improvement
20 of adults through the use of research-based sys-
21 tems that maximize the development of both the
22 cognitive and perceptual capabilities of a par-
23 ticipating individual, including adults in a cor-
24 rectional setting.

1 (B) SCOPE OF DEMONSTRATION PRO-
2 GRAM.—The demonstration program shall to
3 the maximum extent practicable, be—

4 (i) conducted during a period of three
5 consecutive fiscal years, commencing dur-
6 ing fiscal year 2004;

7 (ii) conducted at 12 Federal correc-
8 tional institutions; and

9 (iii) offered to 6,000 inmates, who are
10 categorized as minimum security or less,
11 and are within five years of release.

12 (2) AUTHORIZATION OF APPROPRIATIONS.—
13 There is authorized to be appropriated \$3,000,000
14 in each of the three fiscal years after fiscal year
15 2003, to remain available until expended, for the
16 purposes of conducting the demonstration program
17 authorized by subsection (a).

18 (d) PRERELEASE EMPLOYMENT ASSISTANCE.—

19 (1) IN GENERAL.—The Director of the Bureau
20 of Prisons shall, to the maximum extent practicable,
21 afford to inmates opportunities to participate in pro-
22 grams and activities designed to help prepare such
23 inmates to obtain employment upon release.

24 (2) PRERELEASE EMPLOYMENT PLACEMENT
25 ASSISTANCE.—Such prerelease employment place-

1 ment assistance required by subsection (a) shall in-
2 clude—

3 (A) training in the preparation of resumes
4 and job applications;

5 (B) training in interviewing skills;

6 (C) training and assistance in job search
7 techniques;

8 (D) conduct of job fairs; and

9 (E) such other methods deemed appro-
10 priate by the Director of the Bureau of Prisons.

11 (3) PRIORITY PARTICIPATION.—Priority in pro-
12 gram participation shall be accorded to inmates who
13 are participating in work opportunities afforded by
14 Federal Prison Industries and are within 24 months
15 of release from incarceration.

16 (e) PROVIDING ADDITIONAL OPPORTUNITIES FOR
17 POST INCARCERATION VOCATIONAL AND REMEDIAL EDU-
18 CATIONAL OPPORTUNITIES FOR INMATES.—

19 (1) FEDERAL REENTRY CENTER DEMONSTRA-
20 TION.—

21 (A) AUTHORITY AND ESTABLISHMENT OF
22 DEMONSTRATION PROJECT.—From funds made
23 available to carry out this subsection, the Attor-
24 ney General, in consultation with the Director
25 of the Administrative Office of the United

1 States Courts, shall establish the Federal Re-
2 entry Center Demonstration project. The
3 project shall involve appropriate prisoners from
4 the Federal prison population and shall utilize
5 community corrections facilities, home confine-
6 ment, and a coordinated response by Federal
7 agencies to assist participating prisoners in pre-
8 paring for and adjusting to reentry into the
9 community.

10 (B) PROJECT ELEMENTS.—The project au-
11 thorized by subparagraph (A) shall include the
12 following core elements:

13 (i) A Reentry Review Team for each
14 prisoner, consisting of representative from
15 the Bureau of Prisons, the United States
16 Probation System, the United States Pa-
17 role Commission, and the relevant commu-
18 nity corrections facility, who shall initially
19 meet with the prisoner to develop a reentry
20 plan tailored to the needs of the prisoner.

21 (ii) A system of graduated levels of
22 supervision within the community correc-
23 tions facility to promote community safety,
24 provide incentives for prisoners to complete
25 the reentry plan, including victim restituti-

1 tion, and provide a reasonable method for
2 imposing sanctions for a prisoner’s viola-
3 tion of the conditions of participation in
4 the project.

5 (iii) Substance abuse treatment and
6 aftercare, mental and medical health treat-
7 ment and aftercare, vocational and edu-
8 cational training, life skills instruction,
9 conflict resolution skills training, batterer
10 intervention programs, assistance obtaining
11 suitable affordable housing, and other pro-
12 gramming to promote effective reintegra-
13 tion into the community as needed.

14 (C) PROBATION OFFICERS.—From funds
15 made available to carry out this subsection, the
16 Director of the Administrative Office of the
17 United States Courts shall assign one or more
18 probation officers from each participating judi-
19 cial district to the Reentry Demonstration
20 project. Such officers shall be assigned to and
21 stationed at the community corrections facility
22 and shall serve on the Reentry Review Teams.

23 (D) PROJECT DURATION.—The Reentry
24 Center Demonstration project shall begin not
25 later than 6 months following the availability of

1 funds to carry out this subsection, and shall
2 last 3 years.

3 (2) DEFINITIONS.—For the purposes of this
4 subsection, the term “appropriate prisoner” shall
5 mean a person who is considered by prison authori-
6 ties—

7 (A) to pose a medium to high risk of com-
8 mitting a criminal act upon reentering the com-
9 munity; and

10 (B) to lack the skills and family support
11 network that facilitate successful reintegration
12 into the community.

13 (3) AUTHORIZATION OF APPROPRIATIONS.—To
14 carry out this subsection, there are authorized to be
15 appropriated, to remain available until expended—

16 (A) to the Federal Bureau of Prisons—

17 (i) \$1,375,000 for fiscal year 2004;

18 (ii) \$1,110,000 for fiscal year 2005;

19 (iii) \$1,130,000 for fiscal year 2006;

20 (iv) \$1,155,000 for fiscal year 2007;

21 and

22 (v) \$1,230,000 for fiscal year 2008;

23 and

24 (B) to the Federal Judiciary—

25 (i) \$3,380,000 for fiscal year 2004;

- 1 (ii) \$3,540,000 for fiscal year 2005;
2 (iii) \$3,720,000 for fiscal year 2006;
3 (iv) \$3,910,000 for fiscal year 2007;
4 and
5 (v) \$4,100,000 for fiscal year 2008.

6 **SEC. 11. RESTRUCTURING THE BOARD OF DIRECTORS.**

7 Section 4121 of title 18, United States Code, is
8 amended to read as follows:

9 **“§4121. Federal Prison Industries; Board of Direc-**
10 **tors: executive management**

11 “(a) Federal Prison Industries is a government cor-
12 poration of the District of Columbia organized to carry
13 on such industrial operations in Federal correctional insti-
14 tutions as authorized by its Board of Directors. The man-
15 ner and extent to which such industrial operations are car-
16 ried on in the various Federal correctional institutions
17 shall be determined by the Attorney General.

18 “(b)(1) The corporation shall be governed by a board
19 of 11 directors appointed by the President.

20 “(2) In making appointments to the Board, the
21 President shall assure that 3 members represent the busi-
22 ness community, 3 members represent organized labor, 1
23 member shall have special expertise in inmate rehabilita-
24 tion techniques, 1 member represents victims of crime, 1
25 member represents the interests of Federal inmate work-

1 ers, and 2 additional members whose background and ex-
2 pertise the President deems appropriate. The members of
3 the Board representing the business community shall in-
4 clude, to the maximum extent practicable, representation
5 of firms furnishing services as well as firms producing
6 products, especially from those industry categories from
7 which Federal Prison Industries derives substantial sales.
8 The members of the Board representing organized labor
9 shall, to the maximum practicable, include representation
10 from labor unions whose members are likely to be most
11 affected by the sales of Federal Prison Industries.

12 “(3) Each member shall be appointed for a term of
13 5 years, except that of members first appointed—

14 “(A) 2 members representing the business com-
15 munity shall be appointed for a term of 3 years;

16 “(B) 2 members representing labor shall be ap-
17 pointed for a term of 3 years;

18 “(C) 2 members whose background and exper-
19 tise the President deems appropriate for a term of
20 3 years;

21 “(D) 1 member representing victims of crime
22 shall be appointed for a term of 3 years;

23 “(E) 1 member representing the interests of
24 Federal inmate workers shall be appointed for a
25 term of 3 years;

1 “(F) 1 member representing the business com-
2 munity shall be appointed for a term of 4 years;

3 “(G) 1 member representing the business com-
4 munity shall be appointed for a term of 4 years; and

5 “(H) the members having special expertise in
6 inmate rehabilitation techniques shall be appointed
7 for a term of 5 years.

8 “(4) The President shall designate 1 member of the
9 Board as Chairperson. The Chairperson may designate a
10 Vice Chairperson.

11 “(5) Members of the Board may be reappointed.

12 “(6) Any vacancy on the Board shall be filled in the
13 same manner as the original appointment. Any member
14 appointed to fill a vacancy occurring before the expiration
15 of the term for which the member’s predecessor was ap-
16 pointed shall be appointed for the remainder of that term.

17 “(7) The members of the Board shall serve without
18 compensation. The members of the Board shall be allowed
19 travel expenses, including per diem in lieu of subsistence,
20 at rates authorized for employees of agencies under sub-
21 chapter I of chapter 57 of title 5, United States Code,
22 to attend meetings of the Board and, with the advance
23 approval of the Chairperson of the Board, while otherwise
24 away from their homes or regular places of business for
25 purposes of duties as a member of the Board.

1 “(8)(A) The Chairperson of the Board may appoint
2 and terminate any personnel that may be necessary to en-
3 able the Board to perform its duties.

4 “(B) Upon request of the Chairperson of the Board,
5 a Federal agency may detail a Federal Government em-
6 ployee to the Board without reimbursement. Such detail
7 shall be without interruption or loss of civil service status
8 or privilege.

9 “(9) The Chairperson of the Board may procure tem-
10 porary and intermittent services under section 3109(b) of
11 title 5, United States Code.

12 “(c) The Director of the Bureau of Prisons shall
13 serve as Chief Executive Officer of the Corporation. The
14 Director shall designate a person to serve as Chief Oper-
15 ating Officer of the Corporation.”.

16 **SEC. 12. PROVIDING ADDITIONAL MANAGEMENT FLEXI-**
17 **BILITY TO FEDERAL PRISON INDUSTRY OP-**
18 **ERATIONS.**

19 Section 4122(b)(3) of title 18, United States Code,
20 is amended—

21 (1) by striking “(3)” and inserting “(3)(A)”;

22 and

23 (2) by adding at the end the following new
24 paragraphs:

1 “(B) Federal Prison Industries may locate more than
2 one workshop at a Federal correctional facility.

3 “(C) Federal Prison Industries may operate a work-
4 shop outside of a correctional facility if all of the inmates
5 working in such workshop are classified as minimum secu-
6 rity inmates.”.

7 **SEC. 13. TRANSITIONAL PERSONNEL MANAGEMENT AU-**
8 **THORITY.**

9 Any correctional officer or other employee of Federal
10 Prison Industries being paid with nonappropriated funds
11 who would be separated from service because of a reduc-
12 tion in the net income of Federal Prison Industries during
13 any fiscal year specified in section 4(e)(1) shall be—

14 (1) eligible for appointment (or reappointment)
15 in the competitive service pursuant to title 5, United
16 States Code;

17 (2) registered on a Bureau of Prisons reemploy-
18 ment priority list; and

19 (3) given priority for any other position within
20 the Bureau of Prisons for which such employee is
21 qualified.

22 **SEC. 14. FEDERAL PRISON INDUSTRIES REPORT TO CON-**
23 **GRESS.**

24 Section 4127 of title 18, United States Code, is
25 amended to read as follows:

1 **“§ 4127. Federal Prison Industries report to Congress**

2 “(a) IN GENERAL.—Pursuant to chapter 91 of title
3 31, the board of directors of Federal Prison Industries
4 shall submit an annual report to Congress on the conduct
5 of the business of the corporation during each fiscal year
6 and the condition of its funds during the fiscal year.

7 “(b) CONTENTS OF REPORT.—In addition to the
8 matters required by section 9106 of title 31, and such
9 other matters as the board considers appropriate, a report
10 under subsection (a) shall include—

11 “(1) a statement of the amount of obligations
12 issued under section 4129(a)(1) of this title during
13 the fiscal year;

14 “(2) an estimate of the amount of obligations
15 that will be issued in the following fiscal year;

16 “(3) an analysis of—

17 “(A) the corporation’s total sales for each
18 specific product and type of service sold to the
19 Federal agencies and the commercial market;

20 “(B) the total purchases by each Federal
21 agency of each specific product and type of
22 service;

23 “(C) the corporation’s share of such total
24 Federal Government purchases by specific prod-
25 uct and type of service; and

1 “(D) the number and disposition of dis-
2 putes submitted to the heads of the Federal de-
3 partments and agencies pursuant to section
4 4124(e) of this title;

5 “(4) an analysis of the inmate workforce that
6 includes—

7 “(A) the number of inmates employed;

8 “(B) the number of inmates utilized to
9 produce products or furnish services sold in the
10 commercial market;

11 “(C) the number and percentage of em-
12 ployed inmates by the term of their incarcer-
13 ation; and

14 “(D) the various hourly wages paid to in-
15 mates employed with respect to the production
16 of the various specific products and types of
17 services authorized for production and sale to
18 Federal agencies and in the commercial market;
19 and

20 “(5) data concerning employment obtained by
21 former inmates upon release to determine whether
22 the employment provided by Federal Prison Indus-
23 tries during incarceration provided such inmates
24 with knowledge and skill in a trade or occupation

1 that enabled such former inmate to earn a livelihood
2 upon release.

3 “(c) PUBLIC AVAILABILITY.—Copies of an annual re-
4 port under subsection (a) shall be made available to the
5 public at a price not exceeding the cost of printing the
6 report.”.

7 **SEC. 15. INDEPENDENT STUDY TO DETERMINE THE EF-**
8 **FECTS OF ELIMINATING THE FEDERAL PRIS-**
9 **ON INDUSTRIES MANDATORY SOURCE AU-**
10 **THORITY.**

11 (a) STUDY REQUIRED.—The Comptroller General
12 shall undertake to have an independent study conducted
13 on the effects of eliminating the Federal Prison Industries
14 mandatory source authority.

15 (b) SOLICITATION OF VIEWS.—The Comptroller Gen-
16 eral shall ensure that in developing the statement of work
17 and the methodology for the study, the views and input
18 of private industry, organized labor groups, Members and
19 staff of the relevant Congressional committees, officials of
20 the executive branch, and the public are solicited.

21 (c) SUBMISSION.—Not later than January 31, 2005,
22 the Comptroller General shall submit the results of the
23 study to Congress, including any recommendations for leg-
24 islation.

1 **SEC. 16. DEFINITIONS.**

2 Chapter 307 of title 18, United States Code, is
3 amended by adding at the end the following new section:

4 **“§ 4131. Definitions**

5 “As used in this chapter—

6 “(1) the term ‘assembly’ means the process of
7 uniting or combining articles or components (includ-
8 ing ancillary finished components or assemblies) so
9 as to produce a significant change in form or utility,
10 without necessarily changing or altering the compo-
11 nent parts;

12 “(2) the term ‘current market price’ means,
13 with respect to a specific product, the fair market
14 price of the product within the meaning of section
15 15(a) of the Small Business Act (15 U.S.C. 644(a)),
16 at the time that the contract is to be awarded,
17 verified through appropriate price analysis or cost
18 analysis, including any costs relating to transpor-
19 tation or the furnishing of any ancillary services;

20 “(3) the term ‘import-sensitive product’ means
21 a product which, according to Department of Com-
22 merce data, has experienced competition from im-
23 ports at an import to domestic production ratio of
24 25 percent or greater;

25 “(4) the term ‘labor-intensive manufacture’
26 means a manufacturing activity in which the value

1 of inmate labor constitutes at least 10 percent of the
2 estimate unit cost to produce the item by Federal
3 Prison Industries;

4 “(5) the term ‘manufacture’ means the process
5 of fabricating from raw or prepared materials, so as
6 to impart to those materials new forms, qualities,
7 properties, and combinations;

8 “(6) the term ‘reasonable share of the market’
9 means a share of the total purchases by the Federal
10 departments and agencies, as reported to the Fed-
11 eral Procurement Data System for—

12 “(A) any specific product during the 3 pre-
13 ceding fiscal years, that does not exceed 20 per-
14 cent of the Federal market for the specific
15 product; and

16 “(B) any specific service during the 3 pre-
17 ceding fiscal years, that does not exceed 5 per-
18 cent of the Federal market for the specific serv-
19 ice; and

20 “(7) the term ‘services’ has the meaning given
21 the term ‘service contract’ by section 37.101 of the
22 Federal Acquisition Regulation (48 C.F.R. 36.102),
23 as in effect on July 1, 2002.”.

24 **SEC. 17. IMPLEMENTING REGULATIONS AND PROCEDURES.**

25 (a) FEDERAL ACQUISITION REGULATION.—

1 (1) PROPOSED REVISIONS.—Proposed revisions
2 to the Governmentwide Federal Acquisition Regula-
3 tion to implement the amendments made by this Act
4 shall be published not later than 60 days after the
5 date of the enactment of this Act and provide not
6 less than 60 days for public comment.

7 (2) FINAL REGULATIONS.—Final regulations
8 shall be published not later than 180 days after the
9 date of the enactment of this Act and shall be effec-
10 tive on the date that is 30 days after the date of
11 publication.

12 (3) PUBLIC PARTICIPATION.—The proposed
13 regulations required by subsection (a) and the final
14 regulations required by subsection (b) shall afford
15 an opportunity for public participation in accordance
16 with section 22 of the Office of Federal Procurement
17 Policy Act (41 U.S.C. 418b).

18 (b) BOARD OF DIRECTORS.—

19 (1) IN GENERAL.—The Board of Directors of
20 Federal Prison Industries shall issue regulations de-
21 fining the terms specified in paragraph (2).

22 (2) TERMS TO BE DEFINED.—The Board of Di-
23 rectors shall issue regulations for the following
24 terms:

25 (A) Prison-made product.

1 (B) Prison-furnished service.

2 (C) Specific product.

3 (D) Specific service.

4 (3) SCHEDULE FOR REGULATORY DEFINI-
5 TIONS.—

6 (A) Proposed regulations relating to the
7 matter described in subsection (b)(2) shall be
8 published not later than 60 days after the date
9 of enactment of this Act and provide not less
10 than 60 days for public comment.

11 (B) Final regulations relating to the mat-
12 ters described in subsection (b)(2) shall be pub-
13 lished not less than 180 days after the date of
14 enactment of this Act and shall be effective on
15 the date that is 30 days after the date of publi-
16 cation.

17 (4) ENHANCED OPPORTUNITIES FOR PUBLIC
18 PARTICIPATION AND SCRUTINY.—

19 (A) ADMINISTRATIVE PROCEDURE ACT.—
20 Regulations issued by the Board of Directors
21 shall be subject to notice and comment rule-
22 making pursuant to section 553 of title 5,
23 United States Code. Unless determined wholly
24 impracticable or unnecessary by the Board of

1 Directors, the public shall be afforded 60 days
2 for comment on proposed regulations.

3 (B) ENHANCED OUTREACH.—The Board
4 of Directors shall use means designed to most
5 effectively solicit public comment on proposed
6 regulations, procedures, and policies and to in-
7 form the affected public of final regulations,
8 procedures, and policies.

9 (C) OPEN MEETING PROCESSES.—The
10 Board of Directors shall take all actions relat-
11 ing to the adoption of regulations, operating
12 procedures, guidelines, and any other matter re-
13 lating to the governance and operation of Fed-
14 eral Prison Industries based on deliberations
15 and a recorded vote conducted during a meeting
16 open to the public, unless closed pursuant to
17 section 552(b) of title 5, United States Code.

18 **SEC. 18. RULE OF CONSTRUCTION.**

19 Subsection (e) of section 4124 of title 18, United
20 States Code, as amended by section 2, is not intended to
21 alter any rights of any offeror other than Federal Prison
22 Industries to file a bid protest in accordance with other
23 law or regulation in effect on the date of the enactment
24 of this Act.

1 **SEC. 19. EFFECTIVE DATE AND APPLICABILITY.**

2 (a) EFFECTIVE DATE.—Except as provided in sub-
3 section (b), this Act and the amendments made by this
4 Act shall take effect on the date of enactment of this Act.

5 (b) APPLICABILITY.—Section 4124 of title 18, United
6 States Code, as amended by section 2, shall apply to any
7 requirement for a product or service offered by Federal
8 Prison Industries needed by a Federal department or
9 agency after the effective date of the final regulations
10 issued pursuant to section 17(a)(2), or after September
11 30, 2004, whichever is earlier.

12 **SEC. 20. CLERICAL AMENDMENTS.**

13 The table of sections for chapter 307 of title 18,
14 United States Code, is amended—

15 (1) by amending the item relating to section
16 4121 to read as follows:

“4121. Federal Prison Industries; Board of Directors: executive management.”;

17 (2) by amending the item relating to section
18 4124 to read as follows:

“4124. Governmentwide procurement policy relating to purchases from Federal
Prison Industries.”;

19 (3) by amending the item relating to section
20 4127 to read as follows:

“4127. Federal Prison Industries report to Congress.”;

21 and

22 (4) by adding at the end the following new
23 items:

“4130. Construction of provisions.
“4131. Definitions.”.

